

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NO. C 07-05152 JW

In Re Apple and AT&TM Antitrust
Litigation

**ORDER OVERRULING OBJECTIONS TO
MAGISTRATE JUDGE'S ORDER**

On March 1, 2010, Magistrate Judge Trumbull issued an Order Denying Plaintiffs Paul Holman and Lucy Rivello's Motion to Compel Interim Lead Counsel to Produce Documents to Other Class Counsel.¹ The Order denied a Motion by Plaintiffs' firm, Folkenflik & McGerity ("Counsel"), to compel production of an unredacted version of the class certification motion for disclosure to its clients and to its own expert witness. (Order at 4.)

Presently before the Court is Counsel's Objections to Magistrate Judge's March 1, 2010 Pretrial Order.² Counsel contends that the Order failed to consider certain facts, misapprehended other facts, and disregarded certain arguments submitted on the Motion to Compel. (Motion at 2.)

A district court may modify a magistrate judge's ruling on a non-dispositive matter, such as an order to compel discovery, if the order is "clearly erroneous" or "contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir. 1991). Pursuant to Civil Local Rule 72-2, the court may not grant a motion objecting to a magistrate

¹ (hereafter, "Order," Docket Item No. 316.)

² (hereafter, "Objections," Docket Item No. 340.)

1 judge's order without first giving the opposing party an opportunity to brief the matter. See Civ.
2 L.R. 72-2.

3 In her Order, Judge Trumbull considered the class certification motion as it related to a
4 Stipulated Protective Order entered into between lead counsel for Plaintiffs and Defendants AT&T
5 Mobility LLC and Apple, Inc. (Order at 2.) The Order determined that "Highly Confidential"
6 information relating to "discussion of Apple's most important and sensitive technical intellectual
7 property," could not be disclosed unless Counsel agreed to be bound by the terms of the Protective
8 Order. (Id. at 2-3.) The Order also determined that it was appropriate for interim lead counsel for
9 Plaintiffs to determine which experts were "reasonably necessary" for purposes of disclosure of
10 sensitive information pursuant to the Protective Order. (Id. at 4.) In making this determination,
11 Judge Trumbull found merit in lead counsel's contention that Counsel's expert was not reasonably
12 necessary for the litigation and thus, pursuant to the Protective Order, was not permitted to receive
13 disclosures of "Confidential" or "Highly Confidential" material. (Id. at 4.)

14 Counsel moved to compel production on the ground that it was necessary to view the
15 unredacted class certification motion in order to fulfill a duty to follow the proceedings on behalf of
16 his clients. (Motion at 2.) Counsel was seeking permission to use protected materials "to the extent
17 that such use is allowed by the Protective Order." (Id. at 4.) Counsel contends that Judge Trumbull
18 failed to consider that the expert was necessary to provide "valuable insights" about the class
19 certification motion and "uncovering weaknesses or oversights by interim lead counsel." (Id. at 5.)
20 Further, Counsel contends that the Protective Order permits disclosure of Confidential and Highly
21 Confidential information to an expert who has been "retained by a Party or its counsel to serve as an
22 expert." (Id. at 5-6.) Finally, Counsel contends that the Order mischaracterized the terms of the
23 Protective Order by prohibiting counsel from disclosing "Confidential" information to clients. (Id.
24 at 4.)

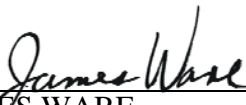
25 The Court finds that Judge Trumbull's Order is not clearly erroneous or contrary to law.
26 Counsel's characterization of the Protective Order as allowing disclosures to any expert "retained by
27 a Party or its counsel" is incomplete. Counsel does not advance any arguments which show that the
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1 expert was “necessary for this litigation.” Instead, Counsel argues that the expert could assist with
2 opposing interim counsel’s motion to be appointed lead counsel. (Motion at 5.) The Court does not
3 find such assistance to be “necessary” for litigation. Further, Counsel’s contention that the Order
4 mischaracterized the terms of the Protective Order as it related to clients is inconsequential because
5 the information sought in the Motion to Compel was “Highly Confidential” information that could
6 not be disclosed to clients in any event.

7 The Court finds that Counsel can fulfill its duty to follow the litigation by entering into the
8 Protective Order as interpreted by Judge Trumbull. While interim lead counsel may have expressed
9 interest in working with Counsel’s retained expert,³ they did not consider him necessary to the
10 litigation and thus, disclosure of any Confidential Information to him is not warranted.

11 Accordingly, the Court OVERRULES Counsel’s Objection to the Magistrate Judge’s Order.

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13 Dated: April 1, 2010



JAMES WARE
United States District Judge

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27 ³ (See Motion at 6-7.)
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THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: April 1, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
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Courtroom Deputy